REMARKS

§103 rejections

In the 9 August 2007 Office Action claims 101-105, 122 – 131 and 133 - 138 are rejected under §103 as being obvious given U.S. Patent 7,162,427 (hereinafter, Myrick) in view of U.S. Patent 6,684,193 (hereinafter, Chavez). The Assignee respectfully traverses the rejections for obviousness by noting that the 9 August 2007 Office Action has failed to establish a prima facie case of obviousness for the rejected claims. More specifically, the Office Action fails to establish a prima facie case of obviousness in a number of ways for every rejected claim. Four of the ways that the cited combination fails to establish a prima facie case of obviousness include:

1. failing to explain how the theoretical combination would be completed;
2. teaching away from the theoretical combination proposed by the Examiner,
3. requiring a change in the principle of operation of each cited invention in order to enable replication of claimed functions, and
4. failing to teach one or more limitation for every claim.

The Assignee also notes that these claim rejections are moot because the claims have been amended.

The first way the cited combination of documents fails to establish a prima facie case of obviousness for claims 101-105, 122 – 131 and 133 - 138 is by failing to explain how the teachings will be combined. It is well established that "particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed" (In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000)). In spite of this well know requirement, the Office Action has not described the manner in which the teachings of these documents would be combined. Given KSR v Teleflex, the inability to explain the combination provides evidence that the Examiner lacks the knowledge of the art required to author a written description rejection for a claim or specification.

The second way the cited combination of documents apparently fails to establish a prima facie case of obviousness for claims 101-105, 122 – 131 and 133 - 138 is by citing a combination of documents that teaches away from the proposed combination. *MPEP § 2145 X.D.2 provides that: "it is improper to combine references where the references teach away from their*

combination." The cited combination of documents teaches away from the proposed combination in a number of ways including teaching incompatible assumptions about value.

The third way the combination cited in the 9 August 2007 Office Action fails to establish a prima facie case of obviousness for claims 101-105, 122 – 131 and 133 - 138 is that the proposed combination would change the principle of operation of at least one of the inventions disclosed in the cited combination. MPEP 2143.01 provides that when "*the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)*". Some of the changes in operating principle required to allow the cited combination function include changing the principal of analysis for both inventions.

The fourth way the combination cited in the 9 August 2007 Office Action fails to establish a prima facie case of obviousness for claims 101-105, 122 – 131 and 133 - 138 is that the proposed combination does not teach or suggest one or more limitation for every claim.

Far from establishing a prima facie case of obviousness for claims 101-105, 122 – 131 and 133 - 138, the cited combination of references in the 9 August 2007 Office Action provides additional evidence that the claimed invention for producing concrete, tangible and useful results is new, novel and non-obvious. The Assignee notes that there are still other ways in which the cited combination fails to establish a prima facie case of obviousness.

§ 101 rejections

In the 9 August 2007 office action, claims 101-105 and 122 - 138 are rejected under 35 U.S.C. §101 as being unpatentable because the Examiner alleges that the disclosed inventions do not fall into areas of patentable subject matter. The Assignee will respectfully traverse the §101 rejection of claims 101-105 and 122 - 138 in several ways. First, by noting that the assertions regarding the areas of patentable subject matter are not in compliance with the requirements of the Administrative Procedures Act and are therefore moot. Second, by noting that the Examiner has failed to establish a prima facie case that the disclosed inventions do not fall into an area of patentable subject matter. The Assignee notes that there are other ways in which these claim rejections can be traversed including the fact that the rejected claims describe a process, an article of manufacture or a machine each of which are areas for patentable subject matter. The Assignee also notes that these claim rejections are moot because the claims have been amended.

§ 112 Second Paragraph Rejections

In the 9 August 2007 Office Action claims 101-105 and 122 - 138 have been rejected under 35 U.S.C. §112 second paragraph. Specifically, the Examiner has made an unsupported allegation that: the claims are indefinite and that the claims omit essential steps. The Assignee will respectfully traverses the §112 second paragraph rejections of each claim in three ways. First, by noting that the Office Action has failed to establish a prima facie case that the claims do not meet the requirements of §112 second paragraph. Second, by noting that the claim rejections based on assertions of alleged indefiniteness and lack of steps are not in compliance with the Administrative Procedures Act and are therefore moot. Third, by noting that it is well established that there is no requirement that a term used in a claim appear "ipsis verbis" in the specification and that the specification supports the use of each word. The Assignee also notes that these rejections are moot because the claims have been amended.

As mentioned previously, the Examiner has failed to establish a prima facie case that claims 101-105 and 122 - 138 do not meet the requirements of §112 second paragraph. It is well established that a prima facie case that a claim does not meet the requirements of §112 second paragraph requires that the claims be interpreted in light of the specification, that the claims be interpreted as one of ordinary skill in the art would interpret them, and that the Examiner show that limitation(s) in the claim do not reasonably define the invention. As detailed below, the Examiner has failed to establish the prima facie case that the claims do not meet the requirements of §112 second paragraph in three ways for every rejected claim. The three ways are: by failing to interpret the claims in light of the specification, by failing to provide any evidence that someone of average skill in the relevant arts would have difficulty interpreting the claims and/or that there are missing steps and/or by failing to establish that the limitation(s) in the claims fail to describe the invention and/or that there are missing steps.

As noted previously, the second way the Assignee will respectfully traverse the §112 second paragraph rejections of claims 101-105 and 122 - 138 is by noting that the assertions regarding the alleged indefiniteness of the claims are not in compliance with the requirements of the Administrative Procedures Act and are therefore moot. In Dickinson v. Zurko, 119 S. Ct. 1816, 50 USPQ2d 1930 (1999), the Supreme Court held that the appropriate standard of review of PTO findings are the standards set forth in the Administrative Procedure Act ("APA") at 5 U.S.C. 706 (1994). The APA provides two standards for review – an arbitrary and capricious standard and a substantial evidence standard. The Assignee respectfully submits that discussion in the preceding paragraphs clearly shows that the instant Office Action fails to

provide even a scintilla of evidence to support the allegation that the specification does not meet the requirements of §112 second paragraph and that as a result it fails to meet the substantial evidence standard. The Assignee respectfully submits that the 9 August 2007 Office Action also fails to pass the arbitrary and capricious test because the Examiner has not provided any evidence of relevant fact finding that can be connected to the rejections contained in the Office Action. In particular, the Assignee notes that the 9 August 2007 Office Action does not contain any declarations from individuals with the requisite skill in the relevant arts to support the assertions regarding the claims. The Assignee notes that there are still other ways in which these rejections can be shown to be arbitrary, capricious and discriminatory.

Finally, as noted previously it is well established that there is no requirement that a term used in a claim appear "ipsis verbis" in the specification and that the specification supports the use of each word.

§ 112 First Paragraph Rejections

In the 9 August 2007 Office Action the Examiner has rejected claims 101-105 and 122 - 138 under 35 U.S.C. §112 first paragraph as lacking a written description that would enable those of average skill in the art to make and use the claimed invention. Specifically, the Examiner has made an unsupported allegation that the specification does not explain: how to make and/or use the invention and that completing the invention requires too much judgment.

The Assignee will respectfully traverses the §112 first paragraph rejection of claims 101-105 and 122 – 138 in two ways. First, by noting that the Office Action has failed to establish a prima facie case that the specification does not meet the requirements of §112 first paragraph. Second, by noting that the assertions regarding the alleged lack of written description are not in compliance with the both standards of the Administrative Procedures Act and are therefore moot.

As mentioned previously, the Examiner has failed to establish a prima facie case that the specification does not meet the requirements of §112 first paragraph. MPEP 2163 states that:

> "in rejecting a claim, the Examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:
>
> (A) Identify the claim limitation at issue; and
>
> (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability in the art" is not a sufficient reason to support a rejection for lack of adequate written description."

As detailed below, the Examiner has failed to establish the prima facie case that the specification does not meet the requirements of §112 first paragraph in at least three ways.

1. the first way the 9 August 2007 Office Action fails to establish the prima facie case that the specification does not meet the requirements of §112 first paragraph is that the Examiner has not identified any reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed;
2. the second way the 9 August 2007 Office Action fails to establish the prima facie case that the specification does not meet the requirements of §112 first paragraph is that it does not contain any express findings of fact; and
3. the third way the 9 August 2007 Office Action fails to establish a prima facie case that the specification does not meet the requirements of §112 first paragraph is that it does not identify the claim limitation(s) at issue.

The Assignee respectfully submits that the assertion that the specification does not meet the requirements of §112 first paragraph also fail under both standards of the APA. First, as detailed above, the Examiner has not provided any evidence to support these allegations. As a result, the §112 first paragraph rejection of claim 101-105 and 122 – 138 fails under the substantial evidence standard. Second, it is well established that "where different arts are involved in the invention, the specification is enabling if it enables persons skilled in each art to carry out the aspect of the invention applicable to their specialty"(In re Naquin, 398 F.2d 863, 866, 158 USPQ 317, 319 (CCPA 1968)). The Assignee respectfully submits that a review of the arguments presented in the 9 August 2007 Office Action make it clear that the §112 first paragraph rejections also fail under the second standard because it would be arbitrary and capricious to rely on the opinion contained in this Office Action.

While no rebuttal is required, the Assignee also notes that a declaration has been provided which also could be used to provide a complete rebuttal of the unsubstantiated allegations contained in the 9 August 2007 Office Action regarding a lack of written description.

Request for affidavits under 37 C.F.R. 1.104

Because the 9 August 2007 Office Action contains no evidence to support the §101 and §112 rejections, these claim rejections rely entirely on the personal knowledge of the Examiner and/or one or more other employees of the Office. 37 C.F.R. 1.104 provides that:

> *When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.*

Accordingly, the Assignee requests that affidavits detailing the facts within the personal knowledge of the Examiner and/or any employee(s) of the Office that were used to support the statements that: "the specification contains numerous parameters which are subject to subjective judgment so that an ordinary practitioner would be unable to implement the invention" (this Affidavit should identify the specific parameters in question and the assumed qualifications of an ordinary practitioner); "the specification contains matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and or use the invention" (this Affidavit should identify the specific areas that are allegedly not described adequately); "the claims are indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention" (this Affidavit should identify the specific areas of alleged confusion (if any) in the revised claims); and "the claims are being incomplete for omitting essential steps, such omission amounting to a gap between the steps" (this Affidavit should identify the allegedly missing steps (if any) in the revised claims) be prepared and forwarded to the Assignee.

The Assignee is hereby also requesting an affidavit detailing the facts within the personal knowledge of the Examiner and/or one or more other employees of the Office that explains why the claims for the Chavez patent fail to note the requirement for symmetry in the data being analyzed be prepared and forwarded to the Assignee. It is well known to those of average skill in the art that the Cholesky decomposition that is the basis for the Chavez invention requires a symmetric positive definite matrix to function (see Wikipedia references). As part of the same affidavit please identify the reason or reasons why the Chavez invention was felt to be relevant to the prosecution of the instant application given this well known requirement. If the reference is no longer felt to be relevant, then there is no need to respond to this request.

The Assignee is making a diligent effort to avoid the submission of duplicative references. To that end the Assignee is hereby also requesting that an affidavit detailing the facts within the personal knowledge of the Examiner and/or one or more other employees of the Office that explains how the Chavez invention differs from the methods alone or in combination previously disclosed in the Ching reference (U.S. Patent 6,078,901). These methods include Arrow-Debrue Theory, Assets, Capital, Ceteris Paribus, Competitive Pricing, Control Theory, Covariance, Efficient Market Theory, Efficient Set, Empirical General Equation Model, Expected Return, Financial Statement, Fixed Point Theory, Game Theory, General Economic Equilibrium Analysis, Graphical Method, Gross Revenue or Income, Income Statement, Indifference Curve, Inventories, Law of Supply and Demand, Leontief Model, Liabilities, Linear Programming, Marginal Usefulness, Market, Marshalliam Model, Mathematical Economics, Microeconomics, Monopolistic Pricing, Neoclassical G.E. Model, Net Revenue or Income, Net Worth, Phillips Curve, Price/Earning Ratio, Production Function, Profit, Set Theory, Simplex Method, Social Accounting Matrix Model, Standard Deviation, Swap, Utility Function, von Neumann-Morgenstern Theorem, Accounting, Annuities, Arbitrage Pricing Theory (APT), Balanced Scorecard, Business Appraisal, Capital Allocation Theory, Capital Asset Pricing Model (CAPM), Capitalization Method, Causal Forecasting Model, Continuing-Value Formula, Corner Portfolios, Debt-Free Valuation Method, Depreciation, Discounted Cash Flow Method, Dividend Discount Models (DDMs), Earning Approach, Economic Value, Finance, Forecasting, Free Cash Flow Perpetuity Formula, Holding Period, Income Approach, Interest, Investment Horizon, Investment Value, Internal Rate of Return, Modern Portfolio Theory, Multiple Regression Analysis, Optimal Resource Allocation Over Time, Perpetuity Calculation, Portfolio Theory, Present Value, Profit Maximization Model, Rate of Return Calculation, Rational Expectation Model, Regression Model, Rental Rate, Reversion, Spreadsheet, Taxation, Terminal Value, Theory of Investment, Time Cost of Money, Time Series Analysis, Uncertainty, Value-Driver Formula, Acid Test Ratio, Actuary Science, Asset Utilization Ratio, Balance-Sheet, Book Value, Buy-Sell Agreement, Capitalization Rate, Comparative Ratio Analysis, Comparative Value, Computer Simulation, Current Ratio, Debt to Equity Ratio, Debt Service Ratio, Econometrics, Empirical Approach to Value, Empirical Time Series Analysis, Equity to Total Asset Ratio, Expected Utility, Expected Value, Fair Market Value, Going-Concern Value, Going Public, Gross Multiplier, Historical Data, Income Statement Coverage Ratio, Insurance, Legal Definition of Price, Leverage Ratio, Long-term Debt to Total Capital Ratio, Market Comparison Method, Marketability, Markowitz Approach, Neural Network, Operating Performance Ratio, Peer Review Process, Probability, Quadratic Programming, Quick Ratio, Return on Investment Ratio, Scientific Approach to Value, Selling Out, Simulation, Statistical Technique, Time-Series Analysis, Total Debt to Total Asset Ratio, Budget, Capital Cost, Cost Approach, Duality, Expenditure, Labor Cost, Liquidation Approach, Liquidation Value, Maintenance, Manufacturing Cost, Rent, Replacement Cost, Salary, Scheduling, Social Cost, Wage, Artificial Intelligence, Factor Analysis, Factor Approach,

Factor Method, Formula Approach, Garbage In: Garbage Out, Hierarchy Problem Solving, Sensitivity Analysis, Structured Modeling, Appraisal, Assessment, Banks, Beta: The measure of systematic risk, Bonds, Business, Capitalism, Claims, Collateral, Combination Approach, Common Stock, Communism, Complex Option, Convertible Bond, Copyright, Corporation, Court, Crime and Punishment, Currency, Decision Making, Economic Welfare, Eminent Domain, Environmental Economics, Ethics, Estimation, Evaluation, Exchange Value, Expert System, Externalities, Fair Value, Feelings, Futures, General Theory of Value, Good and Evil, Ground Fields, Guessing, Hedonism, Intellectual Properties, Intrinsic or Fundamental Value, Intuition, Irrational Investors, Just Price, Labor Theory of Value, Land, Land Economics, Law of Uniformity, Legal System of Justice, Linguistic Approach, Man-made Laws, Money, Money Supply, Moral Progress, Monetary Value, Morality, Noisy Payoffs, Nominal Securities, Non-cash Benefits, Non-monetary Return, Nonprofit Organization, Normative Economics, Objectivity, Observation, Optimal Decision, Optimization Hypothesis, Options on Future Contracts, Option Theory, Patent, Permanent Entity, Policy Making, Polynomial Rings, Positive Economics, Positive--Nonnative Distinction, Pre-Scientific Approach, Price Determination, Privatization, Property, Public Goods, Public Utilities, Real Estate, Research and Development Firm, Risk, Risk Assessment, Risk Aversion, Risk Information, Risk Coverage Analysis, Risk Management, Savings and Loan Association, Scientific Economics, Scientific Method, Securities, Small Business, Social Choice Theory, Socialism, Stocks, Subjective Expected Utility, Surplus Value, Theory of Evolution, Thrift Institutions, Unexpected Past, Utility Analysis, Value, Value In Exchange, Value In Use, Warrants, Wealth, Welfare Economics, Worth, Deterministic method of price determination, Deterministic Solution to value and price, Expected Future, Expected Past, Infinite Reality, Infinite Spreadsheet, Laws of Nature in Social Science, Market Invariant Variables As Inputs, Market Variant As Output, Number of Equations Equal Number of Unknowns, Post-Scientific Knowledge, Post-Scientific Social Science, Quantitative Supply and Demand Model, Quantitative Theory of Value, Rational Behavior and/or Rational Decision Making. If there are no differences, then there is no need to respond to this request.

The Assignee is hereby also requesting that an affidavit detailing the combinations and/or modifications of teachings that the Examiner and other personnel at the U.S.P.T.O. who will be involved in the review of this application and the anticipated appeal have made without the assistance of a patent specification or any other teaching, motivation or suggestion be prepared and forwarded to the Assignee. For each listed combination, the teaching(s) and their source should be identified. The product name for any commercialized combinations of teachings should also be included in the affidavit. If there are none, then there is no need to respond to this request.

Statement under 37 CFR 1.111

37 CFR 1.111 requires that the basis for amendments to the claims be pointed out after consideration of the references cited or the objections made. 37 CFR 1.111 states in part that:

> In amending in response to a rejection of claims in an application or patent undergoing reexamination, the applicant or patent owner must clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must also show how the amendments avoid such references or objections.

The Assignee notes that this requirement is not relevant to the instant application because, as detailed above, there are no references or objections to avoid. Having said that, the Assignee notes that the primary reasons the prior set of claims were amended was to put the application in form for allowance and issue.

Objections

The Assignee objects to this Office Action as being non-statutory. The Assignee also notes that some if not all of the claims appear to be misclassified under class 705.

Reservation of rights

The Assignee hereby explicitly reserves the right to present the previously modified and/or canceled claims for re-examination in their original format. The cancellation or modification of pending claims to put the instant application in a final form for allowance and issue is not to be construed as a surrender of subject matters covered by the original claims before their cancellation or modification.

Conclusion

The pending claims are of a form and scope for allowance. Prompt notification thereof is respectfully requested.

Respectfully submitted,

/B.J. Bennett/

B.J. Bennett, President Asset Trust, Inc.
Date: December 9, 2007

APPENDIX

USPTO Patent Full-Text and Image Database

Searching US Patent Collection...

Results of Search in US Patent Collection db for:
ACLM/"neural network": 3334 patents.
*Hits **1** through **50** out of **3334***

Next 50 Hits

Jump To

Refine Search aclm/"neural network"

	PAT. NO.	Title
1	7,302,339	Hazard countermeasure system and method for vehicles
2	7,302,229	Enabling desired wireless connectivity in a high frequency wireless local area network
3	7,302,102	System and method for dynamically switching quality settings of a codec to maintain a target data rate
4	7,302,089	Autonomous optical wake-up intelligent sensor circuit
5	7,301,093	System and method that facilitates customizing media
6	7,299,214	System for predictive analysis of time series data flows
7	7,299,123	Method and device for estimating the inlet air flow in a combustion chamber of a cylinder of an internal combustion engine
8	7,298,823	Method and device for user-specific parameterization of an x-ray device
9	7,297,129	Bed-side information system
10	7,296,734	Systems and methods for scoring bank customers direct deposit account transaction activity to match financial behavior to specific acquisition, performance and risk events defined by the bank using a decision tree and stochastic process
11	7,296,012	Method of and apparatus for multimedia processing, and computer product
12	7,296,009	Search system
13	7,296,007	Real time context learning by software agents
14	7,296,006	Method of inferring rotorcraft gross weight
15	7,295,977	Extracting classifying data in music from an audio bitstream
16	7,295,961	Method for generating a circuit model
17	7,295,867	Signal processing for measurement of physiological analytes

18 7,295,831 T Method and system for wireless intrusion detection prevention and security management
19 7,295,700 T Object extraction based on color and visual texture
20 7,295,687 T Face recognition method using artificial neural network and apparatus thereof
21 7,295,608 T System and method for communicating media signals
22 7,295,124 T Reflex tester and method for measurement
23 7,293,712 T System and method to automatically discriminate between a signature and a dataform
24 7,293,063 T System utilizing updated spam signatures for performing secondary signature-based analysis of a held e-mail to improve spam email detection
25 7,292,972 T System and method for combining text summarizations
26 7,292,958 T Systems and methods for predicting materials properties
27 7,292,952 T Replacing a signal from a failed sensor in a computer system with an estimated signal derived from correlations with other signals
28 7,290,450 T Process diagnostics
29 7,289,965 T Systems and methods for home value scoring
30 7,289,835 T Multivariate analysis of green to ultraviolet spectra of cell and tissue samples
31 7,288,921 T Method and apparatus for providing economic analysis of power generation and distribution
32 7,287,273 T Individual authentication method using input characteristic of input apparatus by network, program thereof, and recording medium containing the program
33 7,287,014 T Plausible neural network with supervised and unsupervised cluster analysis
34 7,286,987 T Multi-phoneme streamer and knowledge representation speech recognition system and method
35 7,286,699 T System and method facilitating pattern recognition
36 7,286,629 T Method for taking tomograms of a beating heart
37 7,286,484 T Q-learning-based multi-rate transmission control (MRTC) scheme for RRC in WCDMA systems
38 7,284,769 T Method and apparatus for sensing a vehicle crash
39 7,281,518 T Method and system of diesel engine setpoint compensation for transient operation of a heavy duty diesel engine
40 7,281,001 T Data quality system
41 7,280,989 T Phase-locked loop oscillatory neurocomputer
42 7,280,987 T Genetic algorithm based selection of neural network ensemble for processing well logging data
43 7,280,696 T Video detection/verification system
44 7,277,838 T Bootstrap data methodology for sequential hybrid model building
45 7,277,823 T Method and system of monitoring and prognostics
46 7,277,764 T Adaptive output feedback apparatuses and methods capable of controlling a non-minimum phase system
47 7,276,031 T System and method for classifying patient's breathing using artificial neural network
48 7,275,048 T Product support of computer-related products using intelligent agents
49 7,275,047 T Method and apparatus for interpreting information
50 7,274,992 T Method for predicting pore pressure